



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

(petitioner)

DECISION

---

MRA-60/55084

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 2, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Taylor County Dept. of Human Services in regard to medical assistance, a hearing was held on November 14, 2002, at Medford, Wisconsin. The record was left open for 60 days at the petitioner's request.

The issues for determination are whether the county agency correctly determined the amount of the petitioner's income that may be allocated to his spouse and whether it correctly determined the petitioner's share of his medical costs.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Jeanne Vesnefsky, ESS  
Taylor County Dept Of Human Services  
540 E. College Street  
Medford, WI 54451-2027

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of a nursing home Taylor County.
2. The petitioner's spouse lives in the community.
3. The petitioner receives \$1072 in income each month.

4. The petitioner's spouse receives \$1128.63 in income each month.
5. The petitioner's spouse submitted a budget that shows expenses of \$1892 per month. Included in that budget were \$65 for donations to her church and \$75 for the petitioner's personal needs.
6. After the hearing the petitioner submitted a statement showing a \$232.51 monthly car payment.
7. The county agency determined that the petitioner is responsible for \$165.63 of his share of his medical costs.

### **DISCUSSION**

The petitioner lives in a nursing home and receives medical assistance and his wife remains in their family home. Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." §HFS 103.07(1)(d), Wis. Adm. Code. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. *See* §49.455, Wis. Stats. and 42 U.S.C. §13964-5. The allowance is the lesser of \$2232, or \$1990 plus an excess shelter allowance, which is any shelter cost over \$597. *MA Handbook*, Appendix, §23.6.0. An allowance to prevent spousal impoverishment can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the hearing officer's ability to raise the limit. Wisconsin law provides the following test for the exception:

If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse's monthly income allowance under sub. (4)(b).

§49.455(8)(c), Stats. Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the Division of Hearings and Appeals has long and consistently denied donations, including those to a church. *See, e.g.,* MRA-45/#22021 MRA-32/22456 MRA-05/37611 MRA-13/45972 MRA-14/22543.

The petitioner's income is \$1072 per month. His wife's income is \$1128.63 per month. After allocating \$861.37 to the spouse to allow her to have \$1990 to meet her needs each month, and allowing the petitioner \$45 for his needs each month, the county agency determined that the petitioner must pay \$165.63 toward his health care. He seeks to reduce his share of this medical costs and allocate more of his income to his wife. The petitioner's wife submitted a budget claiming expenses of \$1892 per month. *Exhibit 1*. In addition, after the hearing, the petitioner's wife submitted a statement showing that she was paying \$232.51 per month for a recently purchased car, which brings her claimed expenses to \$2124.51 per month. However, \$65 of this amount must be excluded because it is a donation to the church. In addition, the spouse claims \$75 for the petitioner's personal needs. The personal needs of an institutionalized person is set by Wisconsin statutes at \$45 and has already been deducted from the petitioner's share of his costs, so it must be excluded. *See* §49.455(3), Stats. Excluding these two requested items from the spouse's budget reduces that budget to \$1984.51. Because this is less than the \$1990 that the county assumed that she needs to meet her needs, she is not entitled to a greater allocation from the petitioner's income, and he is not entitled to a reduction in the share he must pay toward his medical costs.

I am aware that the petitioner requires dental work. The record was left open for 60 days so that she could submit an estimate of those expenses. It is now almost three months from the date of the hearing and she

has submitted no additional information, so I must determine this matter on the evidence I have available. If the petitioner's expenses increase she has the right to file a new appeal.

### **CONCLUSIONS OF LAW**

1. The county agency correctly determined the amount of the petitioner's income that may be allocated to his spouse.
2. The county agency correctly determined the amount that the petitioner must contribute to the cost of his care.

**NOW, THEREFORE, it is ORDERED**

That the petition herein be and the same hereby is dismissed.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau  
Claire, Wisconsin, this 19th day of  
February, 2003

---

/sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
41/MDO